

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201804454	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/19/2018 12:01 AM	Location of Incident: Lobby of 959 St. Marks Avenue	Precinct: 77	18 Mo. SOL 11/19/2019	EO SOL 11/19/2019	
Date/Time CV Reported Tue, 06/05/2018 2:08 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/05/2018 2:08 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gabriel Cuevas	02226	945633	077 PCT
2. POF Michelle Giglio	18126	954862	077 PCT
3. POF Dharina Estevez	07015	956627	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Alicia Frisch	23972	952752	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas stopped § 87(2)(b)	
B.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas frisked § 87(2)(b)	
C.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas searched § 87(2)(b)	
D.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas refused to provide his name and shield number to § 87(2)(b)	
E.POF Dharina Estevez	Abuse: Police Officer Dharina Estevez refused to provide her name and shield number to § 87(2)(b)	
F.POF Michelle Giglio	Abuse: Police Officer Michelle Giglio refused to provide her name and shield number to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 5, 2018, § 87(2)(b) filed this complaint with the CCRB via the intake phone line.

On May 19, 2018, at approximately 1:35am, § 87(2)(b) was in the lobby of 959 St. Marks Avenue in Brooklyn when Sgt. Gabriel Cuevas, PO Dharina Estevez, PO Alicia Frisch, and PO Michelle Giglio entered the lobby. Sgt. Cuevas approached and stopped § 87(2)(b) (**Allegation A: Abuse of Authority** § 87(2)(g) § 87(2)(b) Sgt. Cuevas asked § 87(2)(b) for his identification and then frisked and searched § 87(2)(b) to retrieve his identification (**Allegation B and C: Abuse of Authority** § 87(2)(g) § 87(2)(b) then allegedly asked Sgt. Cuevas, PO Estevez, and PO Giglio for their names and shield numbers, which they failed to provide (**Allegation D, E, and F: Abuse of Authority** § 87(2)(g) § 87(2)(b)). § 87(2)(b) was not arrested or issued any summonses.

Video footage from the lobby of 959 St. Marks Avenue in Brooklyn was subpoenaed. However, due changeover in management of the building, the request was not fulfilled prior to the expiration of the footage. Thus, it was not obtained.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Gabriel Cuevas stopped § 87(2)(b)

It is undisputed that Sgt. Cuevas stopped § 87(2)(b) inside 959 St. Marks Avenue in Brooklyn. § 87(2)(g)

§ 87(2)(b) testified that he arrived at 959 St. Marks Avenue in Brooklyn at approximately 9:40pm to socialize with friends. For approximately 20 minutes, § 87(2)(b) stood outside the building with approximately ten other people who were drinking alcohol and smoking cigarettes. § 87(2)(b) was not drinking but he did smoke cigarettes. Two marked NYPD vehicle approached and stopped. Officers in the vehicle told the group that they had received a noise complaint and to disperse. § 87(2)(b) told these officers that they had a right to assemble and the officers drove away. The officers did not exit their vehicles. At approximately 12:00am, § 87(2)(b) was inside the lobby of 959 St. Marks Avenue with approximately six other people when Sgt. Cuevas, PO Giglio, PO Estevez, and PO Frisch arrived on scene. At this point § 87(2)(b) had consumed bottle of cranberry juice mixed with Hennessy. He also smoked a cigarette in the lobby approximately 20 minutes prior to the officers' arrival. There were approximately six people outside of the building as well. The officers interacted with the individuals outside for one to two minutes before coming in the front door of the lobby. Sgt. Cuevas, PO Estevez, and PO Giglio entered the lobby while PO Frisch held the door open. § 87(2)(b) heard a female he knew as § 87(2)(b) state that she lived there. At this point, he turned and said that he was here with her. Sgt. Cuevas approached § 87(2)(b) and pulled on his left arm and shoulder causing § 87(2)(b) to turn around and face Sgt. Cuevas (BR 01).

Sgt. Cuevas testified that on May 19, 2018, at approximately 1:00am, the Telephone Switchboard operator from the 77th Precinct called him on his department phone and told him that multiple 311 complaints had been filed regarding individuals at 959 St. Marks Avenue drinking, smoking, and gambling. Sgt. Cuevas responded to the location immediately. Sgt. Cuevas approached the building and his attention was brought to § 87(2)(b) who was inside the lobby of the building.

Sgt. Cuevas first noticed § 87(2)(b) because he was yelling at the officers through the lobby window. Sgt. Cuevas entered the lobby and observed five to ten individuals inside. He immediately approached § 87(2)(b) and asked him for his identification. He testified that he stopped § 87(2)(b) because he suspected him of having an open container of alcohol and for trespassing. Sgt. Cuevas believed that he had an open container of alcohol because he was holding a clear orange juice bottle that had clear liquid inside. In addition, § 87(2)(b)'s breath smelled of alcohol, his eyes were glassy, and he was acting irate. As the officers approached, § 87(2)(b) placed the bottle onto the window sill. Sgt. Cuevas suspected § 87(2)(b) of trespassing in the building because of the 311 complaints and because he was familiar with the building due to calls similar in nature to this one. Sgt. Cuevas was not familiar with § 87(2)(b). The building is not a part of the Trespass Affidavit Program (BR 02).

PO Frisch, PO Estevez, and PO Giglio were largely consistent with Sgt. Cuevas' in regards to their observations of § 87(2)(b). They all observed § 87(2)(b) inside the lobby of 959 St. Marks Avenue in Brooklyn. All three officers testified that they suspected him of being intoxicated and possibly trespassing (BR 03, 04, 05).

A Stop, Question, and Frisk report was filled out by PO Giglio in regards to this incident. The report states that the crime suspected was criminal trespass. The factors noted are that § 87(2)(b) was loitering in the hallway (BR 06).

Where a police officer has reasonable suspicion that a particular person was involved in criminality, the officer is authorized to forcibly stop and detain that person. New York v. Hollman, 79 N.Y.2d 181 (BR 07).

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Gabriel Cuevas frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Gabriel Cuevas searched § 87(2)(b)

It is undisputed that Sgt. Cuevas searched § 87(2)(b). § 87(2)(b) did not allege that Sgt. Cuevas frisked him. However, Sgt. Cuevas testified that he did. § 87(2)(g)

§ 87(2)(b) testified that after Sgt. Cuevas turned him around, he asked for § 87(2)(b)'s license. § 87(2)(b) did not provide it and repeatedly asked Sgt. Cuevas why he needed it. Sgt. Cuevas reached into § 87(2)(b)'s right pant pocket and removed § 87(2)(b)'s wallet. § 87(2)(b) testified that he was wearing skinny sweatpants at the time and that his wallet created a square shaped bulge in his right pant pocket. Sgt. Cuevas removed § 87(2)(b)'s identification from the wallet then handed the identification to PO Giglio (BR 01).

Sgt. Cuevas testified that they he asked § 87(2)(b) for his identification, but § 87(2)(b) refused to provide it. Sgt. Cuevas estimated that he asked § 87(2)(b) for his identification at least three

times and then stated that if he did not provide it, Sgt. Cuevas would retrieve it himself. Sgt. Cuevas reached out and patted § 87(2)(b)'s pant pocket. He felt a wallet. Sgt. Cuevas then reached inside that pocket and removed § 87(2)(b)'s wallet. Sgt. Cuevas testified that the only reason he patted the outside of § 87(2)(b)'s pocket was to locate his wallet. The only reason Sgt. Cuevas reached inside § 87(2)(b)'s pocket was to retrieve the wallet and thus his ID. Sgt. Cuevas did not suspect § 87(2)(b) of being in possession of any weapons. Sgt. Cuevas wanted to obtain § 87(2)(b)'s identification to determine if he was trespassing and in case he decided to write § 87(2)(b) a summons for the open container of alcohol. Sgt. Cuevas testified that he ultimately decided to use his discretion to warn and admonish § 87(2)(b) for the open container violation rather than issuing a summons (BR 02).

PO Frisch testified that Sgt. Cuevas asked § 87(2)(b) for his ID. She did not know if he asked once or multiple times. She knew that he obtained it but couldn't recall if § 87(2)(b) provided his identification or if Sgt. Cuevas obtained it himself. PO Frisch testified that Sgt. Cuevas did reach into two of § 87(2)(b)'s pockets. She did not know if, at this point, Sgt. Cuevas had asked for § 87(2)(b)'s ID. PO Frisch did not know why Sgt. Cuevas reached inside § 87(2)(b)'s pockets. PO Frisch did not see Sgt. Cuevas make any other physical contact with § 87(2)(b) (BR 03).

PO Giglio and PO Estevez both testified that could not recall seeing Sgt. Cuevas reach inside § 87(2)(b)'s pockets. They both testified that Sgt. Cuevas obtained § 87(2)(b)'s identification somehow, but did not know how (BR 04, 05).

The Stop, Question, and Frisk report, prepared by PO Giglio, states that § 87(2)(b) was not frisked or searched. During his CCRB interview Sgt. Cuevas was presented with the report and confirmed that he did not communicate with PO Giglio when she filled out the report but he did review it after she did so. Sgt. Cuevas testified that the report reads no for frisk and search because they were solely pursuant to recovering § 87(2)(b)'s ID (BR 06).

The protective pat-down exception authorizes a limited search of lawfully detained suspects to determine whether a weapon is present. The narrow scope of the intrusion authorized during a protective pat-down may not exceed what is necessary to ascertaining the presence of weapons. People v. Diaz, 81 N.Y.2d 106 (BR 08). A search must be incident to an actual arrest, not just probable cause that might have led to an arrest but did not. People v. Reid, 24 N.Y.3d 615 (BR 14).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant Gabriel Cuevas refused to provide his name and shield number to § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Dharina Estevez refused to provide her name and shield number to § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Michelle Giglio refused to provide her name and shield number to § 87(2)(b)

It is undisputed that § 87(2)(b) requested Sgt. Cuevas' name and shield number § 87(2)(g)

§ 87(2)(b) testified that he asked the officers what they were doing with his ID. He then pointed to a security camera in the lobby and stated that they were on camera. § 87(2)(b) then asked for the officers' name and shield numbers. At that time, Sgt. Cuevas, PO Estevez, and PO Giglio were standing around him. PO Giglio reached into her breast pocket as if to retrieve a business card, but Sgt. Cuevas told her to go outside which she did. Neither Sgt. Cuevas or PO Estevez replied to his request. All the officers then went outside (BR 01).

Sgt. Cuevas testified that after he obtained § 87(2)(b)'s ID, he provided it to PO Giglio to do a warrant check. While they were standing there, § 87(2)(b) asked Sgt. Cuevas for his name. Sgt. Cuevas pointed to his badge and § 87(2)(b) read Sgt. Cuevas' name out loud. He couldn't recall if § 87(2)(b) also read his badge number out loud. § 87(2)(b)'s request was directly to Sgt. Cuevas. He did not hear § 87(2)(b) ask the other officers for their names and never heard them refuse to provide that information (BR 02).

Both PO Giglio and PO Estevez denied refusing to provide their name and shield number to § 87(2)(b). PO Giglio did not recall § 87(2)(b) asking any officer for that information. PO Estevez testified that § 87(2)(b) asked Sgt. Cuevas for his name, which Sgt. Cuevas provided verbally (BR 04, 05).

PO Frisch testified that she could not recall hearing § 87(2)(b) ask any of the officers for their name or shield numbers (BR 03).

Officers should courteously and clearly state their rank, name, and shield number and command, or otherwise provide them, to anyone who requests you to do so. NYPD Patrol Guide, Procedure 203-09 (BR 09).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
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[Redacted]

Civilian and Officer CCRB Histories

- § 87(2)(b) [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
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§ 87(2)(b)

- PO Frisch has been a member-of-service for six years and has been a subject in two CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)
- PO Giglio has been a member-of-service for five years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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